XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(28)

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL NO. 721/2005

APPELLANTS ACCUSED (IN JAIL)

1. Ravi Dixit, S/o Diwari Lal Dixit, aged about 19 years, occupation - Labour, R/o Mathura, Inside Holymate Peerpanch Gali (Street) Mathura (U.P.)

2. Shyam Bihari, S/o Ram Prasad Rautiya, aged about 20 years, R/o – Duldula, P.S. – Kunkuri, Distt. – Jashpur (CG)

VERSUS

Respondent The State of Chhattisgarh, Through : P.S. – Batauli, Distt – Surguja (C.G.)

Present:
Shri Manoj Mishra, Advocate for the appellants.
Shri Neeraj Mehta, Panel Lawyer for the State.

ORAL JUDGMENT
(16th November 2007)

Dhirendra Mishra, J

This appeal is directed against the judgment of conviction and order of sentence dated 6th December 2004 passed in S.T.No.205/04 whereby learned Vth Additional Sessions Judge (FTC), Ambikapur has convicted both the appellants under Sections 397/34 of IPC and sentenced each of them to undergo RI for 7 years, pay a fine of Rs.200 and in

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default of payment of fine to undergo additional RI for six months. Appellant No. 2 Shyam Bihari has also been convicted under Section 27 of the Arms Act and sentenced to undergo RI for 5 years, pay a fine of Rs.100/- and in default thereof to undergo additional RI for three months. All the sentences have been directed to run concurrently.

2. Case of the prosecution, in brief, is that on 13th December 2003 complainant Anil Bijoura, Branch Manager, State Bank of India, was present in the bank as also the other employees and they were discharging their duties when at about 11.40 a.m. accused Shyam Bihari entered in the bank, took out pistol and started firing and accused Ravi Dixit threatened the cashier Idrash Deepak (PW-1), who handed over cash of Rs. 49,000/- to them. Thereafter, both the accused persons started running out of the bank. However, the bank employees also chased them and they were apprehended by the public while they were trying to flee by the motorcycle. The complainant lodged a written report of Ex.P/8, on the basis of which First Information Report of Ex.P/9 was registered.

3. During investigation balance sheet of the bank showing Rs.49,000/- less, payment register etc. were seized vide Ex.P/1. The country made pistol of 0.38 bore with five empty cartridges and one live cartridge in the chamber and four live cartridges were taken into possession from appellant Shyam

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित 3	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Bihari under Ex.P/2. Cash of Rs.34,000/- was taken into possession vide Ex.P/3 from appellant Ravi Dixit. Hero Honda motorcycle was also seized from Jugeram vide Ex.P/12. Permission for filing charge sheet under Section 25 of the Arms Act was obtained from the District Magistrate, Sarguja vide Ex.P/16. Appellants Ravi Dixit and Shyam Bihari were sent for medical examination where Dr. B.R. Kurre examined them and gave his M.L.C. report of Ex.P/17 & P/18. After completing investigation charge sheet was filed against he accused/appellants. The trial Court framed charge under Section 307/34, 397/34 of the IPC against appellant Ravi Dixit whereas charge under Section 307/34, 397/34 of IPC and Section 27 of the Arms Act was framed against appellant Shyam Bihari.

4. During trial the prosecution examined 13 witnesses in all. Thereafter, statements of the accused persons were recorded wherein they denied the evidence appearing against them in the prosecution case and pleaded that they are innocent, they were passing nearby the bank when they heard commotion and because of this they started running when they were caught by the public. However, learned trial Court after hearing counsel for the respective parties acquitted the appellants from the charge under Section 307/34 of the IPC

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and convicted and sentenced them as mentioned in paragraph 1 of this judgment.

5. Learned counsel for the appellant submits that the appellants were stranger and none of the prosecution witnesses identified them since before. However, no test identification parade was conducted during investigation. It is further argued that the prosecution has come up with a case that robbery of Rs.49,000/- has been committed by the appellants from the bank, however, only a sum of Rs.34,000/- has been allegedly seized from the appellants immediately after the incident, which also creates suspicion about the veracity of prosecution case.

6. On the other hand, learned counsel appearing for the State/respondent supported impugned judgment of the trial Court.

7. I have heard learned counsel for the parties and perused the material available on record including the impugned judgment.

8. Conviction of the appellants is based on the statements of complainant Anil Bijoura (PW-5), Idrash Deepak Khaish (PW-1), Ajit Banarjee (PW-6), Nand Kishore (PW-2), Ramakant (PW-8) and recovery of the pistol affected from appellant Shyam

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Bihari, which has been proved from the statements of seizure witnesses as also from the statement of investigating officer.

9. PW-5 Anil Bijoura, Branch Manager of the bank, has categorically stated that on the date and at the time of incident two boys came in his bank, one of them pointed revolver at him and fired from the revolver, which hit wall of the bank and other boy robbed cash from cashier Deepak Khaish. When they started going out of the bank with the cash, they followed them shouting and at that time the persons who were present nearby the bank also assembled there, they started pelting stones towards them and Nand Kishore caught hold of one of the accused. Accused persons had robbed Rs.49,000/- from the bank and accused Shyam Bihari present in the Court had fired from the revolver. In cross-examination, he has denied the suggestion of the defence that they had caught the appellants without identifying them and roped them in the offence of dacoity.

10. PW-1 Idras Deepak Khais has also stated that he was cashier of the bank at the relevant time. On the date of incident i.e. 13.12.2003 he heard some noise and saw appellant Ravi Dixit asking money from him and other accused Shyam Bihari using abusive language. Accused Shyam Bihari had put country made pistol against Anil Bijouri. When he was hesitating in handing over money, accused Shyam Bihari

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pointed the pistol at him and threatened him to give money otherwise he will shoot him, whereupon he handed over a total sum of Rs.49,000/- to the accused. After keeping the robbed money in a cloth, both the accused persons fled from the bank, whereupon he and other employees of the bank chased them shouting "dacoit, dacoit", on which crowd of the villagers gathered and apprehended the accused persons while they were trying to flee by motorcycle.

11. PW-2 Nand Kishore has also stated that the accused persons were apprehended while they were trying to flee by motorcycle by the villagers. He has also proved the seizure memo of Ex.P/2 and P/3, by which country made pistol used in the commission of the above offence and the cash were seized.

12. Learned trial Court after hearing counsel for the respective parties considering the evidence adduced by the prosecution during trial has convicted and sentenced the appellants with an observation that independent witnesses have supported the case of the prosecution, the country made pistol used for commission of the offence by the appellants, which was seized from appellant Shyam Bihari along with empty cartridges and live cartridges and seizure of the cash amount of Rs.34,000/- have also been duly proved by the witnesses. There is no illegality or infirmity in the impugned

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	judgment of the trial Court. Conviction of the appellants is based on proper appreciation of the evidence available on record and there is no force in arguments advanced by learned counsel for the appellants. 13. In the result, the appeal being devoid of substance is liable to be dismissed and is accordingly dismissed. Sd/- DHIRENDRA MISHRA Judge	